

Application No.: 10/523,328
Reply to Office Action dated June 1, 2009
Amendment dated September 21, 2009

Docket No.: WYTH-P01-001

REMARKS

Applicants thank the Examiner for the brief telephone interview on September 16, 2009. In the phone call, the Examiner advised Applicants' agents to file a response to final office action.

Upon entry of the amendments, claims 1-12, 17, 22-25, 33-37, 39, 44-56 constitute the pending claims in the present application.

Claims 33-56 are canceled without prejudice. Claims 1, 3, 8, and 17 have been amended to remove reference to a functional variant. No new matter has been introduced and no new issue has been raised. The amendments are made solely to expedite prosecution of the application, and Applicants reserve the right to prosecute claims of similar or differing scope in subsequent applications.

Applicants respectfully request reconsideration in view of the following remarks. Issues raised by the Examiner will be addressed in the order they appear.

Election/Restriction

The Examiner has declined to rejoin claims 3-4, 6-10, and 24, asserting that the claims are directed to non-elected subject matter. Allegedly, the claims require a different search than is required of the elected and previously searched claims 1, 2, 5, 8, 11, 12, 17, 22, 23, and 25. In addition, the Examiner has withdrawn claims 5, 17, 22, 23, 25 for allegedly requiring non-elected species. Finally, the Examiner requests cancellation of claims 33-37, 39, and 44-56, which were previously withdrawn as being drawn to a nonelected invention.

Applicants respectfully traverse the restriction and request rejoinder of claims 3-7, 9, 10, 17, 22-25. As noted the Amendment dated October 10, 2008, claims 3-4 and 6-9 comprise TRCP1 (the elected species) in addition to non-elected species. As such, amended claims 3-4 and 6-9 read on the elected TRCP1 species. Similarly, claims 5, 10, and 24 and all claims depending directly or indirectly from claim 1, comprise TRCP1 in addition to the non-elected species. Thus, claims 5, 10, 12109700_2.DOC

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and 24 also read on the elected TRCP1 species. Applicants submit that a search for an elected species would necessarily uncover both art related to the elected species alone and art related to the elected species in complexes with other species, assuming that such art existed. For example, a search for Element A would turn up any art encompassing Element A, whether Element A were alone or in combination with another Element B. In the present case, examination of TRCP1 has not, to date, uncovered any relevant prior art, suggesting that prior art related to TRCP1 or to TRCP1 in combination with other proteins does not exist. Thus, claims 3-7, 9, 10, 17, and 22-25 do not require separate searches, and Applicants respectfully request that these claims be rejoined into the elected invention.

The Examiner asserts that a complete reply to the final rejection must include cancellation of nonelected claims 33-37, 39, and 44-56 or other appropriate action, according to 37 CFR 1.144 (MPEP § 821.01). Applicants have canceled claims 33-37, 39 and 44-56.

Claim Rejections under 35 U.S.C. § 112, First Paragraph

Claims 1, 2, 8, 11 and 12 are rejected under 35 USC § 112, first paragraph, as failing to comply with the written description requirement. The Examiner alleges that the specification does not sufficiently describe structures common to all members of the genus of proteins encompassed by the broad definition of "functional variants." Applicants traverse the rejection to the extent it is maintained over the amended claims. Without conceding the propriety of the rejection, and solely to obtain prompt allowance of commercially important subject matter, Applicants have amended claim 1, and all claims depending therefrom, to remove reference to functional variants. Applicants respectfully request reconsideration and withdrawal of the rejection.

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CONCLUSION

In view of the above, Applicants believe that the pending application is in condition for allowance. Early and favorable reconsideration is respectfully solicited. A Petition for a one-month extension of time and appropriate fees are concurrently filed. If an additional fee is due, please charge our Deposit Account No. 18-1945, under Order No. **WYTH-P01-001** from which the undersigned is authorized to draw.

Dated: September 21, 2009

Respectfully submitted,

By 

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